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## Using Oral Methods for European Legal History: Methods, Sources, Projects

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## In memoriam

Thomas Duve    22    Michael Stolleis (1941–2021)

## **Recherche** research

<b>Marietta Auer</b>	30	What is Legal Theory?
<b>Thomas Duve</b>	41	Rechtsgeschichte als Geschichte von Normativitäts- wissen?
<b>Wolfram Brandes</b>	70	Byzantinische Rechtsgeschichte in Frankfurt – eine Bilanz

Early Modern Books in Motion  
and the Production of Normative Knowledge

<b>Manuela Bragagnolo</b>	92	Books in Motion and Normative Knowledge Production in the Early Modern Iberian Worlds. An Introduction
<b>Pedro Rueda Ramírez</b>	100	Law Books in the Hispanic Atlantic World: Spaces, Agents and the Consumption of Texts in the Early Modern Period
<b>Idalia García</b>	115	Orden dentro del desorden: circulación de libros de derecho en Nueva España, 1585–1640
<b>Airton Ribeiro da Silva Jr.</b>	128	Magistrates' Travelling Libraries: The Circulation of Normative Knowledge in the Portuguese Empire of the Late 18th Century
<b>Natalia Maillard Álvarez</b>	143	Lectores de obras jurídicas en la Edad Moderna (Sevilla, siglos XVI–XVII)

## Fokus focus

### Oral History

- |  |     |  |
|--|-----|--|
| <b>Sigfrido M. Ramírez Pérez,<br/>Stefan Vogenauer</b> | 154 | Using Oral Methods for European Legal History: Methods, Sources, Projects  |
| <b>Emma Peplow,<br/>Priscila Pivatto</b>               | 157 | A Different Approach to Legislative Bodies: Reflections on the History of Parliament Oral History Project and Laws Around Abortion                                       |
| <b>Alfredo De Feo,<br/>Michael Shackleton</b>          | 167 | European Legislation and Politics as Seen by Former Members of the European Parliament. A New Tool for Researchers   |
| <b>Nina-Louisa Arold Lorenz</b>                        | 175 | A Summary: Portraying the Legal Culture and the European Human Rights Culture of the European Court of Human Rights and the European Court of Justice through Interviews |
| <b>Miguel Beltrán,<br/>Daniel Sarmiento</b>            | 187 | Making » <i>Un Tribunal para la Constitución</i> «: A Documentary on the Creation and First Years of the Spanish Constitutional Court (1980–1986)                        |

## 25th Annual Forum of Young Legal Historians

<b>Wouter De Rycke, Cornelis Marinus in 't Veld, Maxime Jottrand, Romain Landmeters, Stephanie Plasschaert</b>	198	25th Annual Forum of Young Legal Historians: Introduction
<b>Anna Iacoboni</b>	200	<i>Libertas</i> as an Expression of Roman Identity in Cicero and Sallust
<b>Stephen Hewer</b>	211	Legal Identity and 13th-Century English Ireland
<b>Federica Paletti</b>	222	Appartenenze ed esclusioni. Dinamiche sulla cittadinanza nella Terraferma veneta tra XV e XVI secolo
<b>Florian Reverchon</b>	233	Citoyenneté et identités religieuses dans la doctrine allemande du droit public ecclésiastique au XIX <sup>e</sup> siècle. Aux sources intellectuelles du modèle allemand de sécularisation
<b>Dóra Frey</b>	245	Regulation of the Citizenship of Ethnic Hungari- ans Living Abroad: Ethnopolitics, Demographical Issues and Humanitarian Aspects – Bilateral and Unilateral Solutions

## Forum forum

Martti Koskenniemi's *To the Uttermost Parts of the Earth*

<b>Thomas Duve</b>	258	»This is not a history of international law«. A Brief Introduction into the Debate on Martti Koskenniemi's <i>To the Uttermost Parts of the Earth</i>
<b>Li Chen</b>	262	Reimagine International Law and Relations? A Short Reflection
<b>Jean D'Asprémont</b>	265	Legal Imagination as Resistance
<b>Jean-Louis Halpérin</b>	267	Une histoire transnationale des imaginations nationales?
<b>Madeleine Herren</b>	269	No Esperanto for Law? A Fascinating Book Paves the Way for Future Investigations
<b>Tamar Herzog</b>	271	Alternative Pasts and Alternative Futures
<b>Amalia D. Kessler</b>	273	Beyond Texts: Institutions and the Historical Pursuit of Non-Elite Forms of Legal Imagination
<b>Jörn Leonhard</b>	275	Temporalität und Handlungsmacht: Zwei Anknüpfungen an Martti Koskenniemi
<b>Jessica M. Marglin</b>	277	Notes Towards a Socio-Legal History of International Law
<b>Cristina Nogueira da Silva</b>	279	Legal Imagination, the Power of Texts and Some Hidden Contexts
<b>Jean-Frédéric Schaub</b>	282	Sous-estimer l'imagination juridique de l'Europe du Sud?
<b>Gunnar Folke Schuppert</b>	284	Property Rights as a Governing Institution. A Few Selected Remarks
<b>Inge Van Hulle</b>	286	The Comforts and Confines of the Legal Imagination
<b>Bartolomé Yun-Casalilla</b>	289	Contexts, Protagonists and Legal Imagination: The Spanish Monarchy as a Reference for a Methodological Discussion
<b>Martti Koskenniemi</b>	292	Response – »Imagination begins at home«



<b>Caspar Ehlers</b>	298	Mit Tunnelblick durch Europas Wissenslandschaft Marcia Kupfer, Adam S. Cohen, J.H. Chajes (eds.), The Visualization of Knowledge in Medieval and Early Modern Europe
<b>Jesús Vallejo</b>	300	Las leyes sabias del Rey Sabio Joseph F. O'Callaghan, Alfonso X, the Justinian of his Age
<b>Christoph H. F. Meyer</b>	302	Was von christlichem Recht und Juristenleben übrigblieb Orazio Condorelli, Rafael Domingo (eds.), Law and the Christian Tradition in Italy
<b>Manuela Bragagnolo</b>	306	Early Modern Books and Their Laws: Privileges of Print in Renaissance Italy Erika Squassina, Andrea Ottone (eds.), Privilegi librari nell'Italia del Rinascimento
<b>Marek Starý</b>	309	Rechts- und Sprachtransfer in Mittel- und Osteuropa Inge Bily et al., Sächsisch-magdeburgisches Recht in Tschechien und in der Slowakei
<b>Daniel S. Allemann</b>	312	The School of Salamanca Under Scrutiny José Barrientos García, La Facultad de Teología de la Universidad de Salamanca
<b>Vincenzo Lavenia</b>	315	Teologia della restituzione nell'America spagnola Martín de Eusa, Controversia sobre la obligación de reparar las injusticias
<b>José Luis Egío García</b>	317	Los conceptos de <i>aequitas</i> y <i>epieikeia</i> en la moderni- dad temprana Lorenzo Maniscalco, Equity in Early Modern Legal Scholarship
<b>François Jankowiak</b>	321	Les cardinaux dans tous leurs états à l'âge moderne Mary Hollingsworth et al. (eds.), A Companion to the Early Modern Cardinal
<b>Benedetta Albani, Alexandra Anokhina, Francesco Giuliani, Anna Clara Lehmann Martins</b>	322	Reinterpreting the Counter-Reformation from the Ibero-American Perspective Macarena Cordero, Jorge Cid (eds.), Contrarreforma católica

## Kritik critique

- |                                    |     |  |
|------------------------------------|-----|--|
| <b>Pilar Mejía</b>                 | 325 | Inquisiciones como reacciones intermitentes<br>Donald S. Prudlo (ed.), <i>A Companion to Heresy Inquisitions</i>   |
| <b>Airton Ribeiro da Silva Jr.</b> | 328 | Histórias do saber jurídico a contrapelo<br>Mia Korpiola (ed.), <i>Legal Literacy in Premodern European Societies</i>  |
| <b>Bertram Schefold</b>            | 330 | Die theologischen Quellen von Wirtschaft und Recht bei Lessius<br>Wim Decock, <i>Le marché du mérite</i>   |
| <b>Karl Härter</b>                 | 333 | Oberste Richter im Spannungsfeld von Reichskammergericht, Kaiser und Reichsadel<br>Maria von Loewenich, <i>Amt und Prestige. Die Kammerrichter in der ständischen Gesellschaft</i> |
| <b>Alexander Kästner</b>           | 335 | Urteilen über Suizid als soziale Praxis<br>Riikka Miettinen, <i>Suicide, Law, and Community in Early Modern Sweden</i>   |
| <b>Heinz Mohnhaupt</b>             | 338 | <i>Peregrinatio Academica</i> und Rechtskulturvergleich<br>Marianne Vasara-Aaltonen, <i>Learning Law and Travelling Europe</i>   |
| <b>Miloš Vec</b>                   | 340 | Fashion Victims Everywhere?<br>Giorgio Riello, Ulinka Rublack (eds.), <i>The Right to Dress</i>  |
| <b>Caspar Ehlers</b>               | 342 | Predigen weltweit<br>Timothy J. Johnson et al. (eds.), <i>Preaching and New Worlds</i>   |
| <b>Manuel Bastias Saavedra</b>     | 344 | Conocimiento indígena y derecho en el México colonial<br>Alex Hidalgo, <i>Trail of Footprints. A History of Indigenous Maps</i><br>Ana Pulido Rull, <i>Mapping Indigenous Land</i> |
| <b>Gilberto Guerra Pedrosa</b>     | 346 | Eine Normativität des Imperiums und eine andere des Marktes am Río de la Plata?<br>David Freeman, <i>A Silver River in a Silver World</i>  |

<b>Bruno Lima</b>	348	Raça, escravidão e liberdade na história do direito Alejandro de la Fuente, Ariela J. Gross, <i>Becoming Free, Becoming Black</i>
<b>Alain El Youssef</b>	351	Trazendo o Estado de volta à América Latina? Marta Irurozqui (coord.), <i>El tribunal de la soberanía</i>
<b>Armando Guevara Gil</b>	353	A Continental View of Indigenous Peoples' Rights Jonas Bens, <i>The Indigenous Paradox</i>
<b>Karla L. Escobar H.</b>	355	Gestionar la multiculturalidad y el arte de pensar la indigeneidad Jean E. Jackson, <i>Managing Multiculturalism</i>
<b>Ron Harris</b>	357	Land Law Meets the Sea Lauren Benton, Nathan Perl-Rosenthal (eds.), <i>A World at Sea</i>
<b>Héctor Domínguez Benito</b>	359	Vitoria, Scott y el derecho internacional Paolo Amorosa, <i>Rewriting the History of the Law of Nations</i>
<b>Murat Burak Aydin</b>	361	Beyond the Sharia and Codified Law Dichotomy: From the Late Ḥanafī Tradition to Mecelle Samy A. Ayoub, <i>Law, Empire, and the Sultan</i>
<b>Donal K. Coffey</b>	363	Kennst du das Land, wo die Mangos blühen? Chintan Chandrachud, <i>The Cases that India Forgot</i>
<b>Gautam Bhatia</b>	365	To Constitute a Public Madhav Khosla, <i>India's Founding Moment</i>
<b>Alexandra Woods</b>	367	Lawyers at the Front Line Owen Rogers, <i>Lawyers in Turmoil. The Johannesburg Conspiracy of 1895</i>
<b>Pamela Alejandra Cacciavillani</b>	369	Partenze senza destinazione: storie ed eredità di un esilio intellettuale Eva Elizabeth Martínez Chávez, <i>España en el recuerdo, México en la esperanza</i>

## Kritik critique

<b>Massimo Meccarelli</b>	371	Legalità sostenibile Malte Johannes Becker, Notverordnung und Decreto-Legge
<b>Ruth Dukes</b>	373	A Forward-Looking History of the German Works Constitution Wolfgang Däubler, Michael Kittner, Geschichte der Betriebsverfassung
<b>Leticia Vita</b>	375	<i>Teoría Pura del Derecho</i> y filosofía del derecho en el siglo XXI Matthias Jestaedt, Ralf Poscher, Jörg Kammerhofer (eds.), Die Reine Rechtslehre auf dem Prüfstand
<b>Jean-Louis Halpérin</b>	377	De Bonn à Berlin Uwe Wesel, Rechtsgeschichte der Bundesrepublik Deutschland
<b>Hans-Peter Haferkamp</b>	379	Der Jurist als solcher Inga Markovits, Diener zweier Herren. DDR-Juristen zwischen Recht und Macht
<b>Matthias Schwaibold</b>	382	Monumentale Enttäuschung Philipp von Schweinitz, Justizbauten als ästhetischer Ausdruck des Rechts
<b>Philipp Schmitt</b>	385	The First Steps of Europe's Most Contested Authority Martin Thiele, Motor der Integration
<b>Anselm Küsters, Anna Quadflieg</b>	387	Stell Dir vor, die EU regelt die Weltwirtschaft und keiner sieht hin Anu Bradford, The Brussels Effect
<b>Thorben Klünder</b>	391	The Age of a European Empire or the Time to Jettison some Terminological Ballast? Jürgen Junge, Imperium: Die Rechtsnatur der Europäischen Union
<b>Thorsten Keiser</b>	393	Softes Recht und harte Politik Philippe Pochet, A la recherche de l'Europe sociale

<b>Carine S. Germond</b>	395	Au-delà de la courbure des bananes – le pouvoir transformateur du droit européen  Kiran Klaus Patel, Hans Christian Röhl, Transformation durch Recht
<b>Mario G. Losano</b>	397	¿»Sharia councils« para los musulmanes o »One Law for All«? El caso de Gran Bretaña  Paola Parolari, Diritto policentrico e interlegalità nei paesi europei di immigrazione
<b>Marietta Auer</b>	400	In weiter Ferne, so nah  Bruce A. Kimball, Daniel R. Coquillette, The Intellectual Sword
<b>Amber Rose Maggio</b>	405	Heimatlos  Mira L. Siegelberg, Statelessness: A Modern History
<b>Alessandro Somma</b>	407	Non solo razionalità economica. Stato e morale nel pensiero neoliberale  Jessica Whyte, The Morals of the Market

## **Marginalien**   marginalia

**Johannes W. Flume**   412   Constructing the Stock Exchange.  
On the Rise and Fall of an Iconic Place  
of Capitalism

**Michael Widener**   431   From Law Book to Legal Book:  
The Origin of a Species

**Abstracts**   447   abstracts

**Autoren**   457   contributors



**Sigfrido M. Ramírez Pérez, Stefan Vogenauer**

## Using Oral Methods for European Legal History: Methods, Sources, Projects

There is no need to justify the use of oral testimony in the field of contemporary (legal) history, and recourse to this genre of historical sources is not exclusive to contemporary (legal) historians. The institutionalisation of oral history as a sub-discipline began in the US during the 1960s with the establishment of the Oral History Association in 1966 and its journal *Oral History Review* in 1973. In Europe, during this period a variety of approaches emerged, pioneered by the English tradition of oral history led by Paul Thompson during the 1970s.<sup>1</sup> In »The voice of the past«, the founder of the journal *Oral History* (1969) and the Oral History society in the UK called for a more scientific status for the discipline, engaging in a methodological and substantive dialogue with other social sciences, in particular sociology and anthropology. The aim was to study the practice of preserving the testimony of common people – not just the »great men« of the elites – in their everyday lives. These studies were to include not just »historical moments« and »hard facts«, but also emotions and experiences. The process of historicizing the personal lived experiences of social actors requires the mediation of social scientists; by generating various types of oral testimony these scholars create meaningful insights that can be used, like any other historical source, to interpret the larger structures and historical trends of a particular period and space.<sup>2</sup>

We are delighted and honoured to edit this focus section on the use of oral history for research on contemporary European legal history. In doing so, we can include a British contribution that stems directly from this pioneering European tradition: the Parliament Oral History Project. In this first contribution, Emma Peplow and Priscilla Pivatto, who are responsible for this ambitious project, provide us with some of the key reflections from this tradition applied to an institution of near mythical status in European legal history: the British Parliament. They describe not only the

methodological principles and operational choices for this project on the life stories of UK Members of Parliament (MPs), but also focus on a particular example of legal and historical relevance: the approval of the bill permitting abortion. Further information on this project can be found in their recent monograph, where they thematically and chronologically analyse the political lives of MPs.<sup>3</sup> The politicians were interviewed within the framework of a formal project managed by both a historian (Peplow holds a PhD in history from the London School of Economics and Political Science) and a lawyer (Priscilla Pivatto holds a PhD in public law from the University of São Paulo). The project has been running for nearly a decade, and there are structural reasons for it to continue on a permanent basis, given the growing number of actors it has analysed.

After this strongly institutionalised project covering a venerable establishment, the second contribution focuses on an oral history of a much younger institution: the European Parliament. Contrary to what might be expected, this project was not initiated by the institution itself, with the intent to glorify its past. It is, rather, a modest – but valuable – bottom-up, private initiative without institutional support. It was set in motion by a particular type of actor in parliamentary life: retired top civil servants of the European Parliament. They inject continuity into an institution where the main actors, the Members of the European Parliament, are regularly changing, even if few of them remain in office for a long time. The contribution is written by Alfredo de Feo, former Director of the library and archives of the European Parliament, and Michael Shackleton (PhD in international studies, University of Warwick), formerly responsible for the European Parliament TV Channel. Both have previously done research and teaching on the European Parliament. They present an overview of how useful a modest project like this can be for researching certain key legal issues

1 THOMPSON (1988).

2 WALLENBORN (2006).

3 PELOW / PIVATTO (2020).



in the short, but intense, life of the Parliament. They focus on the role of soft law and informal politics in inter-institutional relations (scrutiny of the Commission, parliamentary majorities) in the expansion of the key functions of the institution, which has only been directly elected since 1979. They provide just a small example of the more detailed chapters that can be read in their 2019 co-edited monograph, where they and other top former civil servants use oral interviews with MEPs to analyse some of the key moments in the history of the European Parliament and its contribution to the development of the European Union.<sup>4</sup> This »history from below« is also a »history from within«; this allows us to re-visit key moments through the eyes of those who experienced them, the MEPs, and first-hand observers, the civil servants of the Parliament.

Of course, legal history research on the European project should not omit the history of European courts, which are further key actors alongside parliaments and executives. The final two contributions of this focus section address them. The first is a comparative project designed by Nina-Louisa Arold Lorenz (JSD Stanford). In her doctoral and postdoctoral research, she collected more than 50 interviews with judges, advocates general and senior administrative staff of the European Court of Human Rights in Strasbourg (established in 1959) and the Court of Justice of the European Union in Luxembourg (1952).<sup>5</sup> Her project aimed to uncover the European human rights cultures of both European courts in order to understand how a complementarity can exist between two Courts that have evolved in parallel for more than 60 years, although they operate in separate legal spheres that prevent direct legal interactions between them. The methodological approach here is very different because of the applied nature of the research, which used oral testimonies to enquire about this particular topic and did not intend to make the content of the interviews accessible or public. In a way, this is the typical approach of social scientists, who make use of structured interviews as a complementary source to test various research hypotheses.<sup>6</sup> These interviews are elaborated after a systematic analysis of available written sources,

such as, in this particular case, the judgments related to human rights in both courts. Dr Lorenz attempted to deconstruct the thick notion of »legal culture« through structured interviews about ideas, values, expectations and attitudes of the actors that make the institution.

But as shown by the second article presented here about an apex court, the Spanish Constitutional Court, historians and lawyers may use oral history not just for research, but also for constructing and elaborating a broader public memory of key legal institutions in a democratic state. This is the great ambition of two Spanish professors of administrative and constitutional law, Miguel Beltrán (University of Castilla-La Mancha) and Daniel Sarmiento (Complutense University Madrid). Their aim is to preserve the testimony of the first judges of the Spanish Constitutional Court and enquire as to the origins of this young court (established in 1980) through the creation of a documentary.<sup>7</sup> This is yet another initiative from below and without much internal institutional support, although Beltrán had served as law clerk at the Court and Sarmiento in a similar function at the European Court of Justice. They developed the project to fill a research gap by focusing on the historical origins of the Court and its founding, which is often a decisive period for any institution, with important organisational choices, which are path-dependent beyond this formative period. In a way, these two scholars made methodological choices very much in line with what is now being experimented with and used in the growing field of public history, where non-professional historians aim to elaborate the memory and history of the past in the public sphere.

We hope that readers will agree that these four distinct projects show the benefits that legal historians can reap from the use of oral sources. This might simply involve structured interviews for specific topics for exclusive use, the creation of oral archives with life stories from key legal actors for public access or projects in which oral testimonies serve for memorial purposes and documentaries. Oral history can also facilitate the preservation of public and private written sources, most importantly private papers (diaries, agendas, personal

4 DE FEO/SHACKLETON (2019).

5 AROLD LORENZ (2007); AROLD LORENZ/GROSSOT/PETURSSON (2013).

6 DELLA PORTA (2010).

7 BELTRÁN/SARMIENTO (2017).

notes), which can help to advance our understanding of the past. Taken seriously, oral history, and more broadly public history, can serve to complement legal historians' use of qualitative data and the more recent trend towards quantitative methods, such as using big data as developed in the field of digital humanities. The »voices of the past« are of fundamental importance for contemporary legal history and provide us with a variety of uses, as illustrated by the four projects presented in this focus section. But it should be emphasised that these are not conclusive. Legal historians can draw upon many further approaches and traditions. The French school of oral history of the public administration, for example, has for nearly two decades provided both new insights on methods and practices of oral history for the study of law-making institutions in government and other executive bodies.<sup>8</sup> Indeed, any oral history programme will

have to start by taking stock of these various traditions and methods before customising its own approach based on its own research object and scientific endeavour.

We are extremely grateful to our contributors. Three of the following four contributions were presented at a workshop in February 2018, organised by what was then the »Max Planck Institute for European Legal History« on the use of oral sources for the study of European legal institutions. The recent change in name to »Max Planck Institute for Legal History and Legal Theory« is but a reminder that institutions constantly evolve, their personnel changes and institutional memories can fade away quickly. Oral histories are the historian's tool to prevent them from falling into obscurity once and for all.



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8 DESCAMPS (2006); DESCAMPS (2019).